



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 26, 2022

IN THE MATTER OF:

Appeal Board No. 625160

PRESENT: RANDALL T. DOUGLAS MEMBER

In Appeal Board Nos. 625160 and 625161, the claimant appeals from the decisions of the Administrative Law Judge filed July 21 2022, which overruled the initial determinations holding, effective June 29, 2020, that the wages paid to the claimant, a professional employee of an educational institution, cannot be

used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$2400 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1800> recoverable pursuant to 44 CFR Sec. 206.120 (f)(5) .

Pursuant to a remand ordered the Appeal Board in Appeal Board Nos. 621515A and 621516A, filed April 22, 2022, the Administrative Law Judge held telephone conference hearings at which testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Although the employer appeared and presented testimony and evidence on the issues in the initial determinations at the hearings held in A.L.J. Case Nos. 021-28945 and 021-28946 on May 26, 2021 and August 30, 2021, the

employer was unable to appear at the previously remanded hearing held on July 18, 2022 because it did not have any witnesses available to attend the hearing. The Board deems it appropriate to remand the case for to allow the employer to be confronted with the testimony and evidence submitted by the claimant at the previously remanded hearing held on July 18, 2022, to be allowed the opportunity to cross-examine the claimant on that testimony and evidence, and to allow the employer the opportunity to present testimony and evidence in response. The parties are to arrange with the hearing section to read the transcripts of the hearings held on May 26, 2021, August 30, 2021, and July 18, 2022, prior to the remanded hearing.

The employer is directed to produce Victoria Clayton as a witness, and the employer and the claimant shall each be afforded an opportunity to cross-examine the other on the testimony previously given in this matter. The employer shall be confronted with and afforded an opportunity to comment on the documents entered into evidence at the July 18, 2022 hearing. Additionally, the parties may produce any other relevant witnesses or documents. The Administrative Law Judge shall take any other testimony or evidence necessary to decide the issues and allow further closing arguments by both parties.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the initial determinations, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision on the initial determinations, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER